

PRIMA EXPLORATION, INC.

IBLA 86-1493

Decided June 9, 1988

Appeal from a decision of the Casper District Office, Bureau of Land Management, returning unapproved a request for suspension of production on oil and gas lease W-75672.

Affirmed.

1. Oil and Gas Leases: Suspensions

BLM may properly decline to approve a request by an oil and gas lessee for a suspension of production where the lessee fails to furnish information required by 43 CFR 3103.4-2 showing the necessity for such relief.

APPEARANCES: Ted J. Gengler, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Prima Exploration, Inc., has appealed from a decision of the Casper District Office, Bureau of Land Management (BLM), dated June 10, 1986, returning unapproved a request for suspension of production on oil and gas lease W-75672. This lease was issued competitively effective August 1, 1981, for a 5-year term. Initial production of oil was established in January 1983 by a well, known as the Susan Federal 27-6, located on the leasehold. Prior to expiration of the primary term of W-75672, appellant sought approval from BLM to shut-in this well for 12 months without having the lease expire. BLM construed this request to be a petition for suspension of production on W-75672 and issued the decision on review.

In its decision, BLM noted that Instruction Memorandum (IM) No. 86-409 (Apr. 22, 1986) outlined the circumstances where it is "appropriate to permit stripper wells 1/ on jurisdictional leases to be shut-in due to the presently depressed oil price without placing the associated leases in jeopardy of expiration." The decision also stated that any such stripper well "must have been producing on a more or less regular basis before and/or

1/ A stripper well is a well producing 10 barrels or less per day. See Office of the Secretary news release, June 6, 1986.

Complete information shall be furnished showing the necessity of such relief.
[Emphasis supplied].

The language underscored above sets forth a standard found in section 39 of the Mineral Leasing Act of 1920, 30 U.S.C. § 209 (1982). Section 39 authorized the Secretary to suspend production and operations in the interest of conservation, and the term of any lease so suspended shall be extended by adding any such suspension period thereto. See Getty Oil Co. v. Clark, 614 F. Supp. 904, 915 (D. Wyo. 1985), aff'd sub nom. Texaco Producing Inc. v. Hodel, 840 F.2d 776 (10th Cir. 1988). A similar extension of the lease term has been identified by the Solicitor where a suspension of production or operations has been granted pursuant to section 17(f) of the Act, 30 U.S.C. § 226(f) (1982). 4/ Solicitor's Opinion, 92 I.D. 293, 299 (1985). Whether to grant, deny, or condition a suspension upon request by a lessee or operator is a matter for the Secretary's discretion. Getty Oil Co. v. Clark, *supra* at 917.

In its statement of reasons, Prima argues that BLM erred in requiring the Susan Federal 27-6 to have been producing on a more or less regular basis before or during the "current price decline." This test, appellant states, has no basis in statute, regulation, or IM Nos. 86-409 and 86-508. The correct test, in appellant's view, is found in IM No. 86-508 wherein the Director, BLM, extended the policies previously limited to stripper wells to include "any leases with wells that may be prematurely abandoned because of fluctuating oil prices." Prima further asserts that lease W-75672 is a producing lease and contains a well capable of production on paying quantities. 5/ In the absence of a suspension, however, there may be premature abandonment of the Susan Federal 27-6 and resulting loss of recoverable reserves, appellant states.

Prima's request for a suspension of production, filed April 30, 1986, consisted of the following sentence: "Request is hereby made for approval to shut-in the well for 12 months without having the lease expire." No supporting data accompanied this request to show how appellant qualified for such action. As noted above, regulation 43 CFR 3103.4-2(a) placed the burden on appellant to furnish complete information showing the necessity for

4/ Section 17(f) states in part: "No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary." Unlike a suspension under section 39, however, a suspension under section 17(f) does not relieve the lessee from paying the rental or minimum royalty. 43 CFR 3103.4-2(c).

5/ On Oct. 28, 1986, during the pendency of this appeal, BLM wrote to Prima stating that if Prima considered lease W-75672 to be capable of producing hydrocarbons in paying quantities, it should furnish BLM adequate documentation that the Susan Federal 27-6 was back on production on a regular monthly basis. An objection to this letter was filed by Prima and subsequently denied by the Board. Prima Exploration, Inc., 96 IBLA 80 (1987).

during the current price decline." Because BLM found the Susan Federal 27-6 well to have been shut-in since January 1983, ^{2/} it concluded that lease W-75672 did not contain a stripper well eligible for shut-in pursuant to IM No. 86-409 and that a suspension of production was not appropriate.

BLM's requirement that appellant must have been producing on a more or less regular basis before or during the "current price decline" is set forth in IM No. WY-86-324 (Apr. 29, 1986). This IM, which was prepared by the Wyoming State Director as "supplemental guidance" for District Managers implementing IM No. 86-409, provides in part:

IM No. 86-409 states "the applicant shall certify that this lease is capable of production in paying quantities but that failure to suspend production will lead to premature abandonment." A well that has been producing on a more or less regular basis before and/or during the current decline should be considered as capable of production in paying quantities. Production reports should verify this.

Shortly after issuance of IM No. 86-409, BLM issued IM No. 86-508 (June 6, 1986), incorporating therein its prior guidance regarding the circumstances in which a stripper well may be properly shut-in, but superseding its prior guidance describing the procedures for processing an application for suspension of production. New procedures for processing such applications were set forth in IM No. 86-508, and these procedures were expressly made applicable not only to stripper wells, but also to "any leases with wells that may be prematurely abandoned because of fluctuating oil prices." Under IM No. 86-508, an applicant for a suspension was required to certify that in the absence of an approved suspension there may be a premature abandonment of wells and resulting loss of recoverable reserves. ^{3/}

Both IM Nos. 86-409 and 86-508 cited 43 CFR 3103.4-2 as setting forth the appropriate procedures for seeking a suspension of production. That regulation states in relevant part:

(a) Applications for relief from production requirements or from operating requirements shall be filed in triplicate in the proper BLM office. No suspension of operations and production shall be granted except where the authorized officer directs or consents to a suspension in the interest of conservation.

^{2/} The record shows that the well has been shut-in since May 1983.

^{3/} Whether this certification was intended to replace that set forth in IM No. WY-86-324 (requiring the lessee to certify that the lease is capable of production in paying quantities) is not entirely clear. It is clear, however, that the suspension regulations in effect in 1986 contain no mention of a well capable of production. Cf. 43 CFR 3103.3-8(a) (1982) and 43 CFR 3103.4-2 (1986).

the relief it sought. BLM's decision returning unapproved appellant's suspension request may be affirmed solely on the basis of appellant's failure to comply with the express terms of the regulation.

The type of information lacking in appellant's application is suggested by the following passage from IM No. 86-409:

As a result of the recent sharp decline in the domestic oil price, many operators may find it necessary to simply plug and abandon a number of stripper wells as uneconomic unless some form of relief from the producing requirements of the associated leases is granted. This Department shares the concerns being expressed by the operators of stripper wells that the abandonment of a substantial number of these wells on jurisdictional leases would mean the immediate loss of the oil which these wells now produce and, in all probability, the loss of their remaining, recoverable reserves. Currently, it is estimated that there are about 21,000 stripper oil wells on jurisdictional leases * * * now producing some 25 million barrels of oil annually * * * and which have approximately 250 million barrels of remaining, recoverable oil reserves * * *. The abandonment of such wells clearly will reduce the ultimate recovery of petroleum resources from jurisdictional leases and result in the loss of the associated, future royalty income. Moreover, all such losses of producing capability will increase this Nation's dependence on imported oil.

A careful reading of this IM and the subsequent IM No. 86-508 makes clear that the policies set forth therein were intended to benefit those lessees whose leases, wells, and reserves were jeopardized by the 1986 drop in oil prices.

The record reveals that the Susan Federal 27-6 reported production during only 5 months (January through May 1983) since the date of first production, December 1982. ^{6/} When in April 1986 BLM received appellant's brief suspension request, it could reasonably conclude, in the absence of contrary data from Prima and in view of the fact the well had not been producing during periods of higher oil prices, that appellant's need for a suspension of production was not caused by the 1986 oil price decline. BLM's review of appellant's well reports for this purpose does not constitute error.

In both its request for suspension and statement of reasons, appellant has failed to demonstrate how the oil price decline jeopardized its lease, well, and reserves. Although Prima alleges on appeal that there may be a premature abandonment of the Susan Federal 27-6 and the resulting loss of

^{6/} Production during these 5 months averaged 16.7, 11.4, 9.9, 9.0, and 8.8 barrels of oil per day, respectively. Appellant's suggestion in its statement of reasons that production continued into "the latter part of 1983 or early 1984" is contradicted by its well reports.

recoverable reserves, regulation 43 CFR 3103.4-2(a) requires more than the mere recitation of this conclusion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Casper District Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge.

